

APPEAL NO. 031659
FILED AUGUST 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 22, 2003,. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable injury extends to include a neuroma and that the claimant had disability from April 16, 2001, and continuing. The appellant (carrier) appealed, disputing both the extent-of-injury and disability findings. The carrier additionally appeals the hearing officer's order that the carrier estimate the claimant's impairment rating (IR) and "commence the payment of impairment income benefits, beginning April 24, 2003..." and the finding that the claimant attained maximum medical improvement (MMI) by operation of law on April 23, 2003. The claimant responded, urging affirmance.

DECISION

Affirmed as modified.

The parties stipulated that the carrier accepted as compensable a right inguinal hernia and that the compensable injury does not extend to include rectus abdominus musculature tear and seroma. At issue was whether the compensable injury extended to include a neuroma and whether the claimant had disability and if so, for what periods. Extent of injury and disability are factual questions for the fact finder to resolve. Conflicting evidence was presented on these issues. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The evidence supports the hearing officer's factual determinations. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The parties agreed that the issues at the CCH were limited to extent of injury and disability. We note that the date of MMI was not an issue before the hearing officer, nor was it tried by consent at the CCH. Consequently, we strike Finding of Fact No. 9: "The Claimant attained [MMI] by operation of law on April 23, 2003." We additionally strike that portion of the order that required the carrier to estimate the claimant's IR and

commence the payment of impairment income benefits beginning April 24, 2003. The hearing officer is generally limited to the issues before her. The 1989 Act specifically limits the issues before the hearing officer to those raised at the benefit review conference (BRC), consented to by the parties, or if not raised at the BRC, a good cause determination was found for not raising the issue at the BRC. Section 410.151. In the instant case, neither party requested to add an issue regarding either MMI or IR.

The extent-of-injury and disability determinations are affirmed, Finding of Fact No. 9 is stricken, and the hearing officer's order is reformed to conform to the issues before her.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge